From the Mexican California Frontier to Arnold-Kennick

Highlights in the Evolution of the California Juvenile Court, 1850–1961

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This article traces the threads of juvenile law reform from the mid-19th century, when chaos reigned on the Mexican California frontier, to the mid-20th century at the point when California passed the Arnold-Kennick Juvenile Court Law, presaging the revolutionary reforms ushered in by the U.S. Supreme Court's decision in *In re Gault*. It highlights key legislation and case law critical to the shaping of modern juvenile dependency and delinquency jurisprudence while attempting to place developments in context with the politics and public sentiment of the time.

The authors thank and acknowledge the dedicated juvenile court judges and other court personnel in California whose extraordinary work and commitment to the children of this state have moved California from a past where children's

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Steeped in the traditions of English common law, *enriquecida con* (enriched with) Mexican civil jurisprudence, and wrapped in Old West stubborn individuality, California's legal system evolved its own unique concept of justice. Nowhere is that uniqueness better demonstrated than in the evolution of the treatment of children in the California courts. This article traces the development of California's juvenile law reform from the mid-19th century to the mid-20th, highlighting key legislation and case law critical to the shaping of modern juvenile dependency and delinquency jurisprudence.

PRE–JUVENILE COURT ERA

There was no legal system for protecting abused children in 1850, when the California Supreme Court issued a writ of habeas corpus to bring "five females, one of whom was the 'Queen of the Bay,' about 14 years of age, and the others, who were 'daughters of chiefs,' " before the court to determine whether Captain Snow of the schooner *Jupiter* had any right to detain the five girls, whom he had kidnapped from the Marquesas Islands and "treated with great cruelty" as they made their way to the port of San Francisco.[1] The girls were so anxious to escape the abuse they jumped overboard, only to be rescued from drowning by their abusers, who continued to hold them in captivity.[2] Snow did not even pretend to have a legal right to detain the girls, so the court discharged them from his custody, and they were eventually returned to their own country.[3] There is no indication that Snow faced any charges for the egregious harm he imposed on the girls, nor is there evidence that the girls were given any protection other than removal from Snow's custody.

In fact, mid-19th-century California did not have much of a formal legal system at all, much less a juvenile court system. Unlike other states that had established governments prior to their admission into the union, California formed a government in the middle of the great political and legal chaos that followed the Mexican War and the discovery of gold—first adopting a Constitution in fall 1849,[4] then entering statehood a year later with a fledgling government and a patchwork of legal customs and traditions influenced by Spanish colonialists, Mexican alcaldes (local judges), American expatriates

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best interests were not always considered to a present where excellence, innovation, and active concern for children have transformed the juvenile court into a continuing source of pride to those of us who work in the court system. The authors also thank Angus Macfarlane, a retired San Francisco probation officer, who generously shared his unpublished "History of California's Juvenile Court" with us. It was his meticulous research that uncovered most of the vintage newspaper articles and illustrations that we used in this article, and he freely offered his time and thoughts whenever we had questions. ■

with common law or civil law backgrounds, and miners with their own traditions of "mining camp" law.[5]

But the judicial system adopted in California's first Constitution most closely resembled that of Mexico—the Supreme and appellate courts corresponding to the Mexican Tribunal Superior and Courts of the Second Instance, superior courts corresponding to the Mexican Courts of the First Instance, and municipal courts corresponding to the Mexican alcalde courts.[6] That theoretical structure actually gave way to a simple system of alcalde justice at the community level in sparsely populated California.[7] Each village (pueblo) elected an alcalde, generally the most respected person in the community, who functioned as the local judge and mayor.[8] The administration of justice was "paternalistic and benevolently dictatorial": the alcalde could rule as he saw fit, "unfettered by substantive standards (legal rules) for the resolution of conflicts."[9] It was a popular system, offering "a locally controlled justice system with extremely easy access," unburdened by legal technicalities.[10] That system of community-oriented paternalism would make its mark on the legal treatment of children in California.

It would be another half century before the juvenile court movement took root and began to spread in the United States, eventually reaching California. Meanwhile, California was grappling with the effects of the Gold Rush: exponential overall population growth; small towns that lost much of their adult male populations to the lure of the mines; disorganized community life "hardly conducive to a stable family life and the raising of children."[11] In its first legislative session, held in San Jose from December 15, 1849, to April 22, 1850, California's new Legislature passed a host of statutes to bring some order to the chaos,[12] among them acts authorizing the Clerk of the Supreme Court to rent a courtroom in San Francisco,[13] defining the rights of husband and wife,[14] and adopting the Common Law of England as the rule of decision in all California courts.[15] In those few months the Legislature covered most of the critical issues facing the young state but failed to produce any laws directly focused on its children. Its "Act concerning Crimes and Punishments," however, did establish that a child under the age of 14 "shall not be found guilty of any crime"[16] but could be found to have the sound mind necessary to manifest an intention to commit a crime if that child "knew the distinction between good and evil."[17] In September 1850, after that first legislative session, California was formally admitted into the Union.[18]

DEVELOPMENT OF POLICY ON DEPENDENT CHILDREN

Concern was growing for children arriving in California whose parents had died on the rigorous trip west, leaving them without care and support.[19] On February 21, 1851, the San Francisco Orphan Asylum opened its doors, becoming the first organized charity on the West Coast.[20] Several other orphanages were established in the ensuing decades.[21]

In 1870, California passed its first adoption law, modeled on New York's law.[22] Before its enactment adoptive parents were forced to use a fictitious apprenticeship to secure children, which, when applied to babies, was characterized as "absurd and repulsive" by the code commissioners who drafted the adoption provisions.[23] Adoption as a proceeding was unknown in common law but had been recognized under the civil law of Rome and was a rite practiced by Native Americans.[24] And the alcalde courts in early California kept busy with "guardianship problems" that were often resolved with what in effect were "private adoptions."[25] For example, an alcalde might draft documents for an illegitimate child's mother who wished to renounce her parental rights to another woman or to a couple.[26] It is likely that a desire for a more regular procedure in matters of guardianship and adoption than the informal and paternalistic involvement of the local alcalde influenced California's lawmakers to enact one of this nation's first adoption laws, despite the absence of adoption proceedings under the common law.[27]


AGREEMENT

"Boys and Girls Aid Society"

Memorandum of Agreement

The child welfare movement began on the East Coast and found its way to California in 1874 with the establishment of the Boys and Girls Aid Society in San Francisco.[28] The society cared for neglected, dependent, and delinquent children and worked informally to encourage compliance with the compulsory education law of 1874.[29] It also advocated legislation affecting children, successfully promoting a bill in 1878[30] that made it unlawful to jail children under 16, and then gaining passage of a statute in 1883[31] that allowed police and the courts to put juvenile offenders under supervised probation.[32]

Around this same time activists in California tackled the problem of direct intervention on behalf of abused and neglected children; the public and religious organizations that received and cared for these children did not actively intervene on their behalf but only assumed care after they had been legally placed in institutional custody.[33] No mechanism at that time provided for direct intervention between a child and his or her parent or caretaker when that child was being abused; but in New York in early 1874, Elbridge Gerry, attorney for Henry Bergh, founder of the Society for the Prevention of Cruelty to Animals (SPCA), had successfully secured a writ of habeas corpus on behalf of a child who was severely beaten by her stepmother.[34] The court had placed the child with the Sheltering Arms, an institution for homeless children, and eventually approved of her placement in a foster home.[35]

This action led to the formation of the Society for the Prevention of Cruelty to Children (SPCC) by Gerry and Bergh, drawing on their experience with protecting animals at the SPCA.[36] The president of the San Francisco SPCA, eager to test this approach in the California courts, intervened on behalf of 3-year-old Harry Sebastian, who had been taken in by a circus performer and forced to perform in a bareback riding act after his impoverished mother was persuaded to sign over custody of the child.[37]

After overwhelming evidence of cruelty and abuse was presented to the court, Harry was remanded to the custody of his birth father, who had been making every effort to reunite with the child.[38] Shortly thereafter, in late 1876, San Francisco's own SPCC was incorporated and shared offices with the SPCA.[39]

On March 30, 1878, under pressure from children's advocacy groups, the Legislature passed two bills to protect children.[40] The first, "An Act for the protection of children, and to prevent and punish certain wrongs to children," made it a misdemeanor to allow any child under age 16 to enter or "remain in any saloon or place of entertainment where any spirituous liquors, or wines, or intoxicating or malt liquors are sold, exchanged, or given away, or at places of amusement known as dance-houses and concert saloons, unless accompanied by a parent or guardian."[41] It also provided for punishment of anyone "having the care, custody, or control" of any child under 16 who allowed the child to beg.[42] The bill gave the court authority to order a child to "an orphan asylum, society for the prevention of cruelty to children, charitable or other institution" if that child was (1) found begging, (2) found wandering with no apparent home or caretaker, (3) found destitute because he or she was an orphan or had a "vicious parent" who was incarcerated, or (4) found frequenting the company of thieves, prostitutes, houses of prostitution, "dance-houses," "concert saloons," theaters, or other such establishments without a parent or guardian.[43] And, finally, the act prohibited imprisonment of any child under 16.[44] The other bill passed that same day, "An Act relating to children," made it a crime to sell, apprentice, or otherwise allow a child to perform, beg, or engage in any "obscene, indecent, or immoral purpose."[45] Again the court was given the authority to commit to an orphan asylum or another appropriate placement any child whose caretaker was convicted under the act.[46] These bills seemed to reinforce the paternalistic, *parens patriae* approach typical of the small-town alcalde: the court was given wide discretion to fashion a solution for each individual abused, neglected, or delinquent child.

DEVELOPMENT OF POLICY ON DELINQUENT CHILDREN

There is ample evidence that the years between 1850 and 1860 were chaotic, rowdy, and dangerous in California—for children and adults alike. Attempts by the Legislature to rein in the Wild West atmosphere included

- an act establishing Judges of the Plains, who attended "all rodeos or gathering of cattle" to settle disputes about the ownership of "any horse, mule, jack, jenny, or horned cattle";[47]
- an act setting the age of majority of males and females—males at 21 years, and females at 18 years;[48]
- an act prohibiting "barbarous and noisy amusements on the Christian Sabbath";[49]
- an act providing "for the better observance of the Sabbath," requiring businesses to close on Sunday;[50] and
- an act protecting female children under 17 years from being "procure[d]," caused, or employed to dance, promenade, or otherwise exhibit themselves "for hire, drink, or gain, in any drinking saloon, dance celler [sic], ball room, public garden, public highway, or in any place whatsoever (theaters excepted) where two or more persons [were] assembled together."[51]

In 1858 there was enough of a problem with children under 18 "leading an idle or immoral life" that the Legislature established the San Francisco Industrial School to detain, manage, reform, educate, and maintain the children committed to its care.[52] Under the act, children could be committed to the Industrial School if they were "vagrants, living an idle or dissolute life"; if they were convicted of any crime or misdemeanor; or, in the case of children under 14, if after trial it appeared that "such child has done an act which, if done by a person of full age, would warrant a conviction of the crime or misdemeanor charged."[53] It was up to the discretion of the police judge[54] or court of sessions[55] to determine whether commitment

to the Industrial School was more "suitable" than the punishment authorized by law[56]—at that time juveniles were often jailed with adult offenders.[57]

Two years later the Legislature, responding to public sentiment against putting juveniles in adult prisons, authorized the building of a state reform school in Marysville.[58] But the school did not last long because San Franciscans were not willing to send their children there and there were no funds to transport children from other parts of the state.[59] The result was that the more-serious juvenile offenders continued to be housed in prisons with adults.[60] Between 1850 and 1860 more than 300 children under age 20 served time in state prisons, and by 1886 there were 184 prisoners under 21 years old.[61] Meanwhile, the San Francisco Industrial School was increasingly housing more-serious juvenile offenders, though it was unable to accommodate more than a small share of the state's total, and was taking on more of a correctional role, eventually becoming unsuitable for less-serious juvenile offenders.[62] Despite this, children who were not serious offenders continued to be ordered to the Industrial School because there just were no other options.

WAYWARD SARAH
A Little Girl Who Stayed Out Late at Nights

> Sarah Feeley, an auburn-haired miss of 13 summers, was consigned to the Industrial School by Judge Hornblower yesterday. Sarah's mother and the arresting officer testified that the girl had a mania for hanging around the doors of cheap theaters at night when she should be in bed. She was not depraved, but it was considered a wise step to have her placed in some institution where the danger of contact with bad companions would be avoided until she made up her mind to become tractable.
>
> Sarah wept bitterly as she was led away from the courtroom to be sent to the school, and she was assured that the length of her stay there would depend altogether on her own behavior.[63]

Sarah's situation was typical of girls committed to the Industrial School—the largest percentage of girls were committed to the institution for leading an idle and dissolute life or were "unmanageable" and surrendered by their parents or guardians.[64] By this time girls committed to the Industrial School were housed in a separate facility, the Magdalan Asylum, operated by the Sisters of Mercy.[65]

The problem of how to manage youthful offenders continued to plague local authorities. A look at the media from that time highlights the problems. These stories ran in the *San Francisco Chronicle:*

A BOY STABBER
A Young Hoodlum Makes Use of a Knife

> John Murphy, a thirteen-year-old hoodlum, who spends half his time in the clutches of the police, stabbed a boy in the Everett House yesterday during a quarrel. The knife penetrated the boy's back, inflicting an ugly although not dangerous wound. Young Murphy fled, but was soon afterward caught by a policeman and locked up in the City Prison charged with assault with intent to commit murder.[66]

YOUTHFUL DEPRAVITY
A Miss of Fourteen Shocks Old Police Officers

> Ida O'Rourke is a chipper little creature of 14 years or less, with a pert look in her eye that captivates the boys, of whom she is very fond. Ida dresses neatly, the feather in her hat is very red and the heels of her shoes high and polished, and it requires considerable financial engineering on the part of Ida's parents, who own a candy store on Sixth Street, to keep the daughter in style. Of late Ida has been ungrateful, stayed out late at night, and as the last alternative her mother caused her arrest as a vagrant. Ida was decoyed into the southern police station yesterday afternoon by the officer who had the warrant, and when she saw her freedom was at an end she stamped, raved and tore her hair and said naughty things that shocked even the oldest officers. Sargeant [sic] Falls, turning to a reporter who was an observer, said: "For eight years I heard tough people take on, but this fourteen-year-old girl is the liveliest specimen of humanity I ever saw."
>
> Ida will be taken to the Police Court this morning and will probably be sent to the House of Correction.[67]

A public still dissatisfied with the treatment of delinquent, homeless, and impoverished children

forced the Legislature to take steps to address their plight.[68] By 1881 more than 50,000 children were not "reached" by the regular public schools.[69] This was a significant number, considering that in 1880 California's total population of school-age children was less than 250,000.[70] In 1884, a legislative commission urged the establishment of a state reform school in Whittier and an industrial school in Preston.[71] It took five years for the Legislature to act on the recommendations of the commission. On March 11, 1889, the Senate and Assembly passed two acts concerning children—one to establish the Preston School of Industry,[72] and one to establish a State Reform School for juvenile offenders in Los Angeles County.[73]

Preston School of Industry Established

The Legislature appropriated $160,000 for the Preston School to purchase land (of at least 100 acres but no more than 300 acres); to build, furnish, and supply the school; and to cover all of the school's expenses.[74] Governance of the school was vested in the State Board of Prison Directors, which was authorized in the legislation to use convict labor and supplies from the Folsom and San Quentin Prisons to build the school.[75] But convicts were not allowed to mingle with any of the boys committed to the school.[76] Nor could children committed to the school be clothed in "convict stripes"; while at the school, they were to be clothed in military uniforms and subject to daily military drills.[77] The school was to provide a course of study comparable to that offered in the public schools, with an ultimate goal of qualifying children who had been committed to the school "for honorable and profitable employment after their release from the institution."[78] Boys could be committed to the school if they were under 18, over 8, and had been found guilty of an offense punishable by a fine, imprisonment, or both, if the court or magistrate thought the child "would be a fit subject for commitment."[79] The board had the authority to conditionally dismiss a child from the school by binding him over "by articles of indenture" to any "suitable" person who agreed to take on his education and instruct him in an art or a trade.[80] A boy who was deemed "incorrigible" could be removed from the school, returned to the court that committed him, and possibly sent to state prison.[81]

Whittier State Reform School Established

The appropriation to establish a reform school was $200,000, to purchase land (no less than 40 and no more than 160 acres) and to build, equip, and maintain the school and its grounds.[82] Unlike the Preston School, the reform school was to be built to accommodate both boys and girls, though ensuring "the absolute exclusion of all communication of any kind or character between the sexes."[83] It was to care for children between 10 and 16 who had been convicted of any crime that, if committed by an adult, would have been punishable by imprisonment in the county jail or penitentiary.[84] The court was mandated to commit children to the reform school in lieu of the penitentiary (except in capital cases) but had discretion to choose between the school and county jail.[85] The court also had the option of committing children under 16 directly to the school instead of trying them when that was recommended by the grand jury.[86] In addition, the court had the discretion, with the consent of the accused, to stop a trial at any stage of the proceedings and commit the child to the school.[87] Finally, the reform school also was open to children between 10 and 18 who (1) demonstrated "incorrigible and vicious conduct" that rendered control of the child beyond the power of the parent or caretaker; (2) were vagrants or demonstrated incorrigible or vicious conduct and had a parent incapable or unwilling to exercise control of the child; or (3) had a father who was dead, had abandoned the family, was "an habitual drunkard," or had failed to support the child and the child's mother or guardian was unable to provide proper care and support.[88] And, in a foretelling of what was to come in the modern juvenile court, the Legislature granted the right to any child accused of an offense punishable by imprisonment to a private examination and trial "to which only the parties to the case and the parent or guardian of the accused and their attorneys shall be

admitted," unless the parent, guardian, or legal representative of the child demanded a public trial.[89]

The school was established in Whittier, and in 1893 the Legislature amended the establishment act to officially name it "The Whittier State School." It changed the ages of children eligible for commitment to between 8 and 18;[90] it also changed the period of commitment from between one and five years to "a period embracing his or her minority, unless sooner discharged by law."[91] The act allowed for an "honorable dismissal" when a child at the school was deemed to be "so reformed as to justify his discharge."[92] A child could be conditionally dismissed by being indentured to a "suitable person" or returned to his or her parents or another "reputable person" conditioned on "the proper custody, care, education, and moral and industrial training" of the child.[93] After the opening of the Preston and Whittier schools, the San Francisco Industrial School closed its doors.[94]

CASE LAW DEVELOPMENT BEFORE THE CREATION OF THE JUVENILE COURT

During the decades between 1870 and 1900 some of the most interesting court cases emerged as California's youthful judicial system struggled with the question of how to treat children under the law. In 1876, the Supreme Court ruled in *Ex parte Ah Peen*[95] that a 16-year-old child "leading an idle and dissolute life"[96] in San Francisco, without parental control—his parents unknown—could be committed to the Industrial School without a jury trial because the purpose was not to punish him for any criminal behavior but to reform and train him "with a view to his future usefulness when he shall have been reclaimed to society, or shall have attained his majority."[97] The court emphasized that because Ah Peen's parents had abandoned him, "the State, as *parens patriae*, has succeeded to his control, and stands *in loco parentis* to him."[98] In effect, the State stood in the shoes of his parents and made the kind of decisions that one would expect parents to make for a child who was incapable of properly controlling himself.

By contrast, 20 years later, in 1897, when in *Ex parte Becknell* the Supreme Court reviewed its first juvenile proceeding where a 13-year-old boy convicted of burglary had been committed to the Whittier State School without a jury trial, it found a violation of the California Constitution's guarantee of a right to a jury trial.[99] The court unanimously held that the "boy cannot be imprisoned as a criminal without a trial by jury."[100] It also ruled against giving guardianship of the boy to the Whittier School in the absence of a finding of parental unfitness.[101]

Those two cases set the stage for a showdown on the right to a jury trial for juveniles that would not occur for another quarter century, when the California Supreme Court decided that there was no such right in *In re Daedler*.[102] Though the holding in *Daedler* is authority, debate on the issue continues even today.[103]

A CHILD CONFINED IN A COUNTY JAIL.

NINE-YEAR-OLD BOY'S FATE.

GROWING NEED FOR JUVENILE COURT

Increased immigration and burgeoning populations in Los Angeles and San Francisco led to a growing problem for police trying to manage recalcitrant children.[104] With inadequate placement facilities and the absence of a funded probation system, judges and attorneys resorted to legal fictions to avoid sending children to prison: district attorneys refused to file charges following the arrest of a youngster, and judges either dismissed cases after they were filed or ordered indefinite continuances to avoid disposition.[105]

The inadequacy and ineffectiveness of the legislative steps taken to address the needs of dependent and delinquent children before the turn of the century are amply demonstrated in this *San Francisco Chronicle* article from September 24, 1897:

A CHILD CONFINED IN A COUNTY JAIL

NINE-YEAR-OLD BOY'S FATE

THREE DAYS IN PRISON AT LOS ANGELES

Sentence of a Mischievous Pasadena Lad—Among Hardened Criminals

LOS ANGELES, September 23.—"I want my mamma. I want to go home. I don't like this place. Please let me go home!" And between pitiful pleadings the little tones quaver, sound out again and then sink into the sobbings and moans of a terrified little child. It was the voice of Harry Haas, a nine-year-old Pasadena boy, detained in the County Jail charged with petit larceny.

There are men in the jail who have cut throats and devised and executed all manner of evil, and have brought sorrow on themselves and those who love them without hesitation, but as those sad words come to their ears and they realize that a little child has been put in the same vile place as themselves they become indignant and are full of pity.

Harry has given the Pasadena police considerable trouble. He used to unhitch horses tied to curbstones and take rides, and he kept one animal belonging to Seventh-Day Adventists three days during their recent encampment. His latest offense was taking a shovel from the Park nursery, of which W. N. Campbell is secretary. The latter caused the child's arrest, and Justice Rossiter ordered him confined for three days. The boy's father offered to send him to his grandparents in Kansas. He does not appear to be a vicious child, only thoughtless and mischievous.[106]

By the end of the 19th century there was widespread disillusionment with reform schools that did not reform and with dysfunctional systems to protect abused and neglected children.[107] This frustration drove a movement to enact child labor and compulsory education legislation in an attempt to bring the welfare of children to the forefront.[108] But most of the legislation enacted to direct the care and control of children in California before 1900 was primitive and without any means of enforcement.[109] For example, probation was offered as an option to juveniles, but there were no probation supervisors; and though education was compulsory, there were no attendance officers to enforce the law.[110]

BIRTH OF THE JUVENILE COURT

The effort to create a juvenile court was just one part of a larger movement at the turn of the century to contend with the problems facing children in that era.[111] Compulsory education was seen as at least a partial solution to the problems of children laboring in sweatshops and mines and of keeping children off the streets and out of jails and prisons.[112] Education was also seen as a cure for social problems ranging from poverty and crime to unemployment, abuse, and neglect.[113] Massachusetts passed the first compulsory education law in 1852, followed by a rush of states accepting that approach to welfare reform in a time of great concern about children.[114] California passed its own compulsory education law in 1874.[115] By 1930 most states required that children attend school at least until they were 14, and many set the age at 16.[116] Other measures seen as justified steps toward ensuring that children enjoyed a childhood and recognizing the special needs and interests of children included raising the age when a person could marry and age-based curbs on access to tobacco, alcohol, and related substances.[117]

With compulsory education came a focus on truancy; school attendance was seen as a means of protecting children from the "vices, temptations, and distractions of the street."[118] Courts and schools joined to "identify, regulate, and sanction school absence."[119] A need for increased court jurisdiction followed—to struggle with "incorrigibles, runaways, and recalcitrants … and the social control of women."[120] So truancy predated the juvenile court as a mechanism to control children and hold their parents or caretakers accountable.[121]

THE NATIONAL MOVEMENT FOR A JUVENILE COURT

Judge Ben Lindsey in Colorado established the first de facto juvenile court jurisdiction under a state truancy law passed in 1899, just before the enactment

BEN LINDSEY: "THE KID'S JUDGE"

Judge Ben Lindsey is widely known for his work as a founder and champion of the juvenile court in this country but is not generally recognized for the other work he did as a "child policy entrepreneur."[1] In addition to founding the juvenile court in Denver, Colorado, he established the first juvenile and domestic relations court in the United States and gained passage of a strong child labor law in Colorado.[2] But his high-profile progressive politics got him ousted from the Colorado juvenile court after he was targeted by the powerfully influential Ku Klux Klan, and he subsequently suffered a politically charged disbarment.[3] After relocating to Los Angeles, he temporarily served as an advisor to Cecil B. De Mille on a script dealing with reform schools and took a bit part in a film portraying a juvenile court judge.[4] He had been admitted to the California Bar and was eventually elected to Los Angeles County's superior court.[5] But despite wanting to serve again on the juvenile court, he was never given the opportunity.[6] This didn't stop Lindsey—within a few years of his judgeship he drafted and introduced legislation that created the Children's Court of Conciliation, making it harder for couples to divorce if children were involved.[7] Under the legislation, the Court of Conciliation had jurisdiction over a divorce case for 30 days, during which the parties, their attorneys, a mediator, and the judge would attempt to save the marriage.[8] The court was successful and led to conciliation courts in other counties[9]—supporting the arguable claim that Ben Lindsey pioneered the first family mediation services in California's court system.

1. *See* Michael Grossberg, *Changing Conceptions of Child Welfare in the United States, 1820–1935, in* A CENTURY OF JUVENILE JUSTICE 19 (Margaret K. Rosenheim et al. eds., Univ. of Chicago Press 2002).
2. CHARLES LARSEN, THE GOOD FIGHT 54, 72 (Quadrangle Press 1972).
3. *Id.* at 204–17.
4. *Id.* at 217.
5. *Id.* at 218, 235.
6. *Id.* at 236.
7. *Id.* at 238–39.
8. *Id.* at 240.
9. *Id.* at 241.

of Illinois' landmark Juvenile Court Act.[122] After his first year on the bench, Lindsey was frustrated with inadequate appropriations and an ineffectual structure of industrial and reform schools for rehabilitating "incorrigible" children; he saw the options as little more than "junior prisons" and was further frustrated that children often spent months in adult jails before being sentenced to the reform or industrial schools.[123] Looking for a viable solution to the problem, Lindsey stumbled onto the School Law of 1899 and saw a creative opportunity when he read:

> Every child between the ages of 8 and 14 years, and every child between 14 and 16 years, who cannot read and write the English language or is not engaged in some regular employment, who is an habitual truant from school, or who is in attendance at any public, private or parochial school and is incorrigible, vicious, or immoral in conduct, or who habitually wanders about the streets and public places during school hours, having no business or lawful occupation, shall be deemed a juvenile disorderly person, and be subject to the provisions of this act.[124]

Lindsey saw the possibility in that statutory language for the court, under the *parens patriae* mantle, to assert jurisdiction over children not as criminals but as wards of the state in need of correction.[125] He persuaded the district attorney to file all complaints against children under the School Law and started the first informal juvenile court in the nation.[126]

But Illinois is largely credited with passing the first juvenile court law in the country.[127] The Chicago Women's Club, with the help of other women,

including activists from the settlement-house movement, drove the legislation. After working years on different child welfare projects, it approached the Chicago Bar Association in 1898, concerned that children were being housed in prisons with dangerous adult inmates.[128] The bar association drafted legislation for a juvenile court, carefully presenting it so it would not be identified as a "woman's measure."[129] It narrowly passed on April 14, 1899, and went into effect on July 1 of that year.[130] The new law was rough at best—it had no provisions for private hearings or confidential records and included an unfunded probation system and no detention homes for children.[131] But it did contain important provisions: the right to a jury trial for anyone tried under the act,[132] designation of a special judge and a special courtroom in each circuit court to handle juvenile matters, notice requirements, authority to appoint probation officers, and a prohibition against jailing children under 12 with adults.[133] The act was to be liberally construed to carry out its purpose: "That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done, the child be placed in an improved family home and become a member of the family by legal adoption or otherwise."[134] During the years it took to shape the character of the juvenile court that we know today, other states came on board with their own juvenile court legislation.

A significant boost to the juvenile court movement came with President Theodore Roosevelt's endorsement of the concept in his message to Congress on December 6, 1904: "No Christian and civilized community can afford to show a happy-go-lucky lack of concern for the youth of to-day; for, if so, the community will have to pay a terrible penalty of financial burden and social degradation in the tomorrow."[135] Congress responded promptly with passage of a juvenile court law for Washington, D.C.[136]

CALIFORNIA'S JUVENILE COURT

The need for a juvenile court in California was evident. Frustration had grown in the courts and the community. This piece in the *Los Angeles Times* articulated the problem:

> **BOY CRIMINAL**
> **HE PERPLEXES COURT**
>
> Another of the boy criminals that the courts don't know what to do with was taken before Judge Smith yesterday for stealing a bicycle. He is a gawky, dirty-faced little youngster named Frank Fisher, 15 years old. He looks about 10 years. Judge Smith obviously didn't know what to do with an infant charged with a crime punishable by imprisonment in the penitentiary. He ordered the trial postponed.[137]

California was the seventh state to pass legislation establishing a juvenile court.[138] The movement for a juvenile court converged in the political, economic, and social center of the state, San Francisco.[139] The principal architect of the movement was Doctor Dorothea Moore of the California Club. Dr. Moore had been an active participant in the Chicago juvenile court movement, and the California Club was modeled on the Chicago Women's Club, which had had such a profound influence on Chicago's juvenile court.[140] Again, as in Chicago, women and women's organizations—the California Club of San Francisco, settlement-house workers, the State Federation of Women's Clubs, the Commonwealth Club, the Boys and Girls Aid Society, and others—spearheaded the legislation, joining forces to persuade legislators to pass the bill.[141] But when it finally passed in February 1903, it had been greatly weakened by a compromise that left the bill's probation officers unfunded.[142]

1903 JUVENILE COURT LAW

The legislation was modest—it applied to children under 16, both dependent and delinquent, who were not already inmates at any state or private institution or reform school.[143] A "dependent child" was defined as any child

> found begging, or receiving or gathering alms . . . , or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms; . . .

> found wandering and not having any home or any settled place of abode, or proper guardianship, or visible means of subsistence; . . .
>
> found destitute, or whose home, by reason of neglect, cruelty, or depravity on the part of its parents, guardian, or other person in whose care it may be, is an unfit place for such child; . . .
>
> [who] frequents the company of reputed criminals or prostitutes, or [who] is found living or being in any house of prostitution or assignation . . . ;
>
> [who] habitually visits, without parent or guardian, any saloon [or] place of entertainment where any spirituous liquors, or wine, or intoxicating or malt liquors are sold, exchanged, or given away[;]
>
> [who] is incorrigible[;] or
>
> [who] is a persistent truant from school.[144]

A "delinquent child" was defined as any child who violated any state or local law.[145] The law applied to all counties in the state, each of which was to designate a judge to hear juvenile cases.[146] Juvenile cases were to be heard at special sessions, and only those who came under the act could be present at the special session.[147] Any California citizen could bring a petition before the superior court on behalf of a dependent child in the county, asking that the court assume jurisdiction over the child.[148] The court would then issue a citation requiring the child and his or her caretaker to appear before the court. If the caretaker failed to appear, the court could initiate contempt-of-court proceedings and issue an arrest warrant.[149] If the court found the child to fit the definition of *dependent* under the act, it had the authority to commit the child to the care of a "reputable citizen" or to an appropriate institution for "such time during its minority as the court may deem fit."[150] The court also had the authority to appoint probation officers, but they would serve without compensation from the state.[151] The probation officer was to conduct any investigation required by the court, to represent the interests of the child when the case was heard, to furnish the court with any information and assistance it required, and to take charge of the child before and after trial.[152] The probation officer had the discretion to bring the child before the court at any time for any further action deemed appropriate by the court.[153]

When children under 16 were arrested, they were brought before a police judge or justice of the peace, who could continue the hearing, assign a probation officer, and allow the child to remain home subject to visits by the probation officer; or, if the judicial officer deemed it in the best interest of the child, commit the child to an institution, reform school, or suitable family home, or appoint a guardian. If the court ordered the child removed from his or her home, the case was certified and bound over to the superior court for a hearing, just as though the child had been brought in under a dependency petition.[154] The superior court then had a full arsenal of tools available to it, from the "friendly supervision" of a probation officer to commitment of the child to a state reform school or jail, with the exception that no child under 12 could be committed to jail.[155] And when children were sentenced to confinement in an institution with adult inmates, the act made it unlawful to house them in "the same room or yard or enclosure" with the adults or to allow the children to be within the sight or presence of an adult inmate.[156] Finally, records and testimony from juvenile court proceedings were not admissible as evidence against a child in any court proceeding other than those in juvenile court.[157] The law, echoing Illinois', was to be liberally construed to carry out its purpose: "[t]hat the care, custody, and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can be properly done, the child be placed in an approved family home, with people of the same religious belief, and become a member of the family by legal adoption or otherwise."[158]

Implementation of the Law

The counties of Los Angeles, Alameda, and San Francisco pioneered implementation of the legislation.[159] Those counties that did not implement the legislation found themselves in a quandary when it

came to handling juvenile crime. An article published in the *San Diego Union* on July 1, 1903, puts it in perspective:

> **THE NEED OF A JUVENILE COURT**
> **A Case in Which the New Law Will Probably Have to Be Invoked**
>
> The cases of two boys charged with burglary before Judge Anderson yesterday afternoon, brought before the officers of the law the necessity of establishing a juvenile court in this city, as provided by the last legislature. While the boys were caught red-handed, the judge could inflict no punishment and can only send them to the reform school on complaints by their parents.
>
> The reason is that the last legislature passed an act providing that the board of supervisors establish in each county a court for the trial of all youthful offenders. It also prohibits the incarcaration [sic] of these youthful offenders in any jail or police station without an order from the juvenile court. These courts have been established in San Francisco and Los Angeles, and the necessity for one here is apparent.
>
> Yesterday Officer Cooley arrested two boys, Tilo Lugo and Arthur Chatrand for entering the store of William Bryant at the foot of D Street during the night, and stealing a quantity of fireworks and fruit. Lugo, the older boy has been up before and is considered incorrigible. He "boosted" the smaller boy through the transom, and together they got away with considerable plunder. On account of the new law, Judge Anderson could do nothing, so he dismissed them with a severe lecture. As the parents of the boys have not made application for committing them to the reform school, nothing can be done in the matter at present.[160]

An Era of Amendments

In 1904 the Board of Charities and Corrections recommended that the juvenile court be expanded to all counties in the state.[161] Then amendments in 1905 more fully developed the county probation system and provided salaries for probation officers in some counties.[162]

The law was further expanded in 1909, increasing the bases for asserting jurisdiction over minors, providing for detention homes, providing salaried probation officers, setting specific procedures for committing children to Preston or Whittier, and specifying the superior court of each county as the site of the juvenile court.[163] New grounds for jurisdiction included

- a child's persistent refusal to obey "the reasonable and proper order or directions of his parents or guardian";[164]
- a child whose father was dead or had abandoned the family or was "an habitual drunkard" or had failed to provide for the child, and it appeared that the child was destitute and without a suitable home or the means to obtain a living, or that the child was in danger of "being brought up to lead an idle or immoral life"; or where both parents were dead, or the mother, if living, could not provide for the child;[165]
- a child who habitually used alcohol, smoked cigarettes, or used opium, cocaine, morphine, or any other similar drug without the direction of a physician.[166]

In addition, the expanded law extended the upper age limit of qualifying children from 16 to 18[167] and of children who could be committed to the Preston and Whittier state schools to 21.[168] Salaries were set for all probation officers, ranging from $5 per month in rural counties with small populations to $225 per month in densely populated urban counties.[169] The new law heavily relied on the assistance of probation officers to aid the court in making its dispositional decisions.

In no case could a child under age 14 who was charged with a felony be sentenced to the penitentiary unless he or she had first been sent to a state school and proven incorrigible.[170] Nor could a child under 8 or a child who suffered from a contagious disease be committed to a state school.[171] The court was required to be "fully satisfied" that any child's mental and physical condition was such that the minor would be likely to benefit from the "reformatory educational discipline" of the schools.[172]

Significantly, the 1909 legislation included the right to a private hearing in any dependency or delinquency case upon the request of the child or his or her parents or guardian.[173] The court's order declaring a child a dependent or delinquent could not be deemed a conviction of crime.[174] Every county, or city and county, was mandated to provide and maintain a detention home for dependent and delinquent children—to be conducted as a home, not a penal institution.[175] Further, the legislation included a provision that a child could not be taken from his or her parent or guardian without the parent's or guardian's consent unless the court made a finding that the custodian was incapable, or had failed or neglected to provide properly for the child, or unless the child had been on probation with the parent or guardian and failed to reform, or unless the welfare of the child required removal from the parent's or guardian's custody.[176]

Unlike the Illinois statute, none of California's early juvenile laws provided for a jury trial in delinquency cases. But the 1909 Juvenile Court Law had a specific joint jurisdiction provision stating that a jury demand by a defendant between the ages of 18 and 21 who was accused of a felony would be handled by trying the minor in regular criminal court; then, on conviction, with application by and consent of the minor, the juvenile court could receive evidence as to whether the child should be managed as a delinquent and given probation or committed to a state school.[177] If a minor committed to a state institution under those circumstances proved "incorrigible," he or she could be returned to superior court for sentencing to the penitentiary.[178]

Dependent and Delinquent Children Treated the Same

Though the juvenile court law addressed both dependent children and delinquent children, there was little difference in the way they were handled under the law. It appears that, from a policy standpoint, the Legislature viewed both categories as posing the same threat or potential threat to the community. As the Supreme Court stated in *Nicholl v. Koster,* "[t]he main purpose of the act [was] to provide for the care and custody of children who ha[d] shown, or who from lack of care [we]re likely to develop, criminal tendencies, in order to have them trained to good habits and correct principles."[179]

Thus the early focus of the juvenile court was not on protecting children from their abusive caretakers as much as it was to save them from becoming criminals.[180]

Growing Dissatisfaction With the Law

But how did the juvenile law play in the counties? By 1910 there was significant dissatisfaction, at least in San Francisco.[181] According to some critics, it was "more difficult, more expensive, more uncertain, and less permanent" to protect dependent children under the new law than it had been under the old guardianship proceedings in probate court.[182] The problem seemed to be that the San Francisco courts frequently invoked the juvenile court law to deal with unfit parents—placing children in temporary commitments while compelling their parents to be moral or to avoid divorce.[183] The cost of temporarily committing the children increased court costs tenfold in an eight-year period.[184] There were also serious disputes over processing procedures for de-

pendent and delinquent children, over whether parents should be held more accountable, and over state and supplementary aid issues.[185]

The statute's validity was challenged in 1912 on the ground that it conflicted with the section of California's Constitution requiring that "[e]very act shall embrace but one subject, which subject shall be expressed in its title."[186] The court upheld the validity of the statute, stating:

> Ultimately, of course, the act seeks to prevent … dependency or delinquency. One method of doing this is to take the child out of the custody of the person who has caused or permitted it to become dependent or delinquent. Another is to punish the person who is responsible for the condition which is sought to be cured. Both methods are directly related to the final purpose of protecting the growing generation from conditions detrimental to its welfare.[187]

As more counties implemented the law, discontent grew and by 1914 had reached a critical level.[188] Amendments in 1911[189] and 1913[190] had done very little to quell opposition to the law by judges, probation officers, and others involved in juvenile court work.[191] The 1911 amendments had expanded the reach of the legislation to everyone younger than 21 years.[192] That expansion invited a challenge in 1912 by a probation officer in Sacramento against the county auditor for failing to pay her for her services.[193] The auditor defended the county's refusal to pay in part on the ground that the legislation was unconstitutional because it embraced females over 18 and under 21 as "minor children," while the Civil Code specified that females of 18 were adults.[194] The court responded that the Legislature had the right to classify people according to age for the purpose of dealing with them as dependent or delinquent within the juvenile law: "The road to ruin is as accessible to a female under the age of twenty-one as it is to a male. To accomplish the beneficent objects of the law the state may properly reach out its saving hand to rescue males and females alike who are on the downward path. No sound reason can be suggested why the state may not do this to save a female under the age of twenty-one if it may do so to rescue and save a male of that age."[195]

The fact that the Legislature had designated a person as a minor or as an adult was immaterial.[196] The court enthusiastically embraced the purpose of the juvenile law: "These juvenile courts, which are in fact but an extension of the jurisdiction of the superior courts, are the creation of modern philanthropic endeavor, and are designed to and in fact do provide a most excellent means of restraining and reforming wayward persons who, unchecked, may become a menace to society."[197]

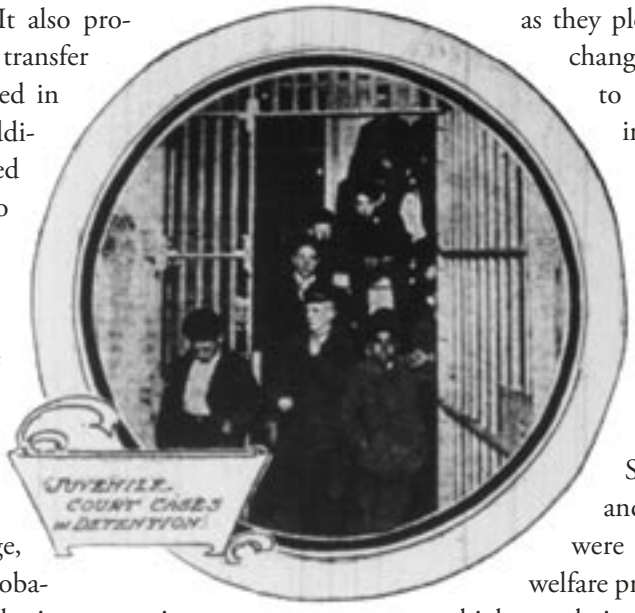
But displeasure with the legislation continued. There appeared to be an underlying conflict in finding a solution to the problems, with community reformist groups on one side and judges and probation officers on the other.[198] Court officers were particularly wary of having their hands tied by specifically prescribed procedures in juvenile cases.[199] One judge summed up the feeling of court personnel: "I sincerely trust no attempt will be made to prescribe the exact processes that the court should follow in these cases. The legislature should lay down the essentials which are to govern. That ground has generally been covered … beyond that the legislature should not circumscribe the exercise of judicial authority in these cases."[200]

That attitude is understandable given the alcalde-type justice system that had been in place for years. But through the mediation efforts of the Board of Charities and Corrections, all sides finally reached some common ground on desirable juvenile court jurisdiction and procedures, which led in 1915 to the enactment of an overhaul of the Juvenile Court Law. The amended law left many areas "open for differences of interpretation and the growth of divergent practices,"[201] which may explain why opposition was limited.

1915 JUVENILE COURT LAW

The 1915 Juvenile Court Law maintained the bases of jurisdiction included in 1909 and added a category for "insane, or feeble-minded" children who

could not be properly controlled by their parents or guardians and posed a danger to others.[202] By then the Legislature had also established the California School for Girls in Ventura, where all girls housed at the Whittier State School were transferred[203] and where all girls were to be committed under the 1915 law.[204] No boys younger than 16 were to be committed to the Preston School of Industry, and no boys over 16 were to be committed to the Whittier State School.[205] The law set out specific procedures for handling complicated delinquency cases, with provisions for offenders under age 18 and for offenders who fell between the ages of 18 and 21.[206] The court was given jurisdiction over both boys and girls until they were 21 unless the child "reformed" or unless a girl was married with the permission of the court.[207] It also provided for the interdistrict transfer of cases that had been filed in the wrong county.[208] In addition, it provided a detailed procedural mechanism to declare children free from their parents' custody and control; as in modern juvenile jurisprudence, once the court made an order freeing a child from his or her parents' custody and control, it had no power to set aside, change, or modify the order.[209] Probation officers and the probation committee in each county assumed greater responsibilities for supervising children, controlling the detention homes, submitting annual reports, and assisting the court.[210] And the 1915 Juvenile Court Law provided, for the first time, for the appointment of referees to "hear the testimony of witnesses and certify to the judge of the juvenile court their findings upon the case submitted to them, together with their recommendation as to the judgment or order to be made in the case in question."[211] The court could then follow the recommendation of the referee, make its own order, or set aside the findings and order a new hearing.[212] But the legislation set no qualifications for the referees,[213] though it did specify that female referees should be appointed where possible to hear the cases of female minors.[214] Finally, the legislation included a provision requiring that any girl over age 5 who came under the provisions of the law must be dealt with, as far as possible, in the presence of a woman probation officer or other woman staff person; this also applied to the transportation of female children.[215]



Great Procedural Disparity Among Counties

Except in cases where children were freed from their parents' custody and control, court officers were given great discretion to handle petitions as they pleased, as well as to modify, change, and set aside orders, and to dismiss petitions.[216] This, in part, led to a great procedural disparity among counties, particularly between the large urban centers and the small rural counties.[217] Juvenile courts developed quickly in the three most heavily populated counties—San Francisco, Los Angeles, and Alameda. These counties were dealing with special child welfare problems generated in part by high populations of immigrant children facing adverse living conditions and societal standards of health, housing, school attendance, and parental supervision that often differed from the standards in their countries of origin.[218] In addition, well-organized advocacy groups in these urban communities promoted a greater focus on the reform of child protection standards.[219] By contrast, the small rural counties were dealing with large numbers of dependent children because of scarce family resources and the high-risk occupations—lumbering, mining, dredging—available to men in those areas, who

often perished on the job.[220] The divergent county practices frustrated the Board of Charities and Corrections, which was attempting to build consistent practices grounded in the law.[221] In one report the board complained: "Every county in California is a law unto itself in social matters and there is a wide diversity in understanding and administering county problems affecting dependents and delinquents."[222]

Appellate Courts Attempt to Help Shape the Law

Meanwhile, the state's appellate courts were attempting to address the diversity of administration through case law. In *People v. Wolff,* a defendant convicted of murder and sentenced to death appealed his conviction in part on the ground that he had been only 16 years old when the crime was committed, claiming that the juvenile court erred when it remanded him to the superior court for a criminal trial: "[A] person under eighteen years of age cannot be prosecuted or punished for the crime of murder and … can be dealt with only as a ward of the juvenile court."[223] In rejecting the claim, the California Supreme Court clarified that a juvenile court judge had the power under the law to remand a case for criminal proceedings if the judge were to conclude that "such person is not a fit subject for further consideration" under the juvenile court law.[224]

And the California Supreme Court in *In re Daedler* resolved the unsettled question of a minor's entitlement to a jury trial in juvenile court proceedings.[225] Daedler, who was found by the juvenile court to have committed a murder when he was 14 and who had been committed to the Preston School of Industry, brought a petition for writ of habeas corpus before the court, claiming that the juvenile court law was unconstitutional because it denied him the right to a jury trial on the charges.[226] The court, relying on its holding in *Ex parte Ah Peen*[227] and rejecting its holding in *Ex parte Becknell,*[228] denied Daedler's application, stating: "The processes of the Juvenile Court Law are, as we have seen, not penal in character, and hence said minor has no inherent right to a trial by jury in the course of the application of their beneficial and merciful provisions to his case."[229]

But in *In re Edwards* the court reined in the juvenile court, holding that it had no right to withhold the custody of an 8-year-old boy from his parents without a specific finding of abandonment that complied with the statute's requirement that the child had been "left in the care and custody of another by his parent or parents without any provision for his support … for the period of one year with intent to abandon said person."[230] The court held that other findings would have sufficed to justify taking the child from the custody of his parents, but none had been made.[231] The child's mother in this case had "strenuously endeavored by legal means, and by means which were not at all times strictly legal, to gain control of her child that she might exercise parental control over him."[232]

JUDICIAL COUNCIL ESTABLISHED

When the Judicial Council was created by constitutional amendment in 1926, it launched with great expectations.[233] Ballot arguments in favor of the amendment explained:

> One of the troubles with our court system is that the work of the various courts is not correlated, and nobody is responsible for seeing that the machinery of the courts is working smoothly. When it is discovered that some rule of procedure is not working well it is nobody's business to see that the evil is corrected. But with a judicial council, whenever anything goes wrong any judge or lawyer or litigant or other citizen will know to whom to make complaint, and it will be the duty of the council to propose a remedy, and if this cannot be done without an amendment to the laws the council will recommend to the legislature any change in the law which it deems necessary.[234]

There was little opposition to the amendment, which was approved by "a very large majority" along with other measures favorable to the judiciary.[235] Of course, from its inception the Judicial Council had its hands full with the problems of all courts in the state and did not focus specifically on the juvenile court for many years to come. But almost immediately the Judicial Council began collecting statistics

on all of the state's courts, including the juvenile court.[236] And it began looking around the country to see if systems in other jurisdictions could be adopted in California. By 1930, the Judicial Council had examined an "improved procedure" for domestic relations cases in place in Detroit, where, because of additional court-ordered money being collected for dependent wives and children, "the number of delinquents hailed into court [was] less than otherwise would [have been] the case. . . ."[237]

1937 JUVENILE COURT LAW

In 1937 the juvenile court law was rolled into the newly created Welfare and Institutions Code, which encompassed the state department of social welfare, the state department of institutions, the juvenile court, orphans, child-care agencies, indigents, the disabled, the mentally ill, the elderly, and oversight of private, county, and state institutions.[238] Though the earlier juvenile court law was repealed, many of the new statutory provisions were "substantially the same" as the 1915 law and were to be "construed as restatements and continuations thereof, and not as new enactments."[239] Some new provisions filled gaps in the earlier statute and some broke new ground, including

- Establishment of a California Bureau of Juvenile Research "for the clinical diagnosis of the inmates of the Whittier State School" and other state institutions, to "carry on research into the causes and consequences of delinquency and mental deficiency, and . . . inquire into social, educational, and psychological problems relating thereto."[240]
- Creation of a more fully developed mechanism for declaring a child free from the custody and control of his or her parents, including more specified situations where such a declaration would be appropriate: having parents who were "habitually intemperate" for at least one year prior to the filing of a petition; having parents who had been convicted of a felony and imprisoned where the felony was "of such a nature as to prove the unfitness of the parents to have the future custody and control of the child"; having parents who were found in a divorce action to have committed adultery when "the future welfare of the child [would] be promoted by an order depriving such parents of the control and custody of the child"; or having parents who had been declared "feeble-minded or insane" when the parents would not be capable of properly supporting or controlling the child.[241]
- Establishment of forestry camps as an alternate facility for wards of the juvenile court who were "amenable to discipline other than in close confinement."[242] Boys committed to the forestry camps could be required to work on the buildings and grounds, on clearing forest roads for fire prevention or firefighting, on forestation or reforestation of public lands, or making fire trails and fire breaks.[243]

Juvenile Court Characterized by Informal Procedures

Juvenile court growth in California remained largely local, varying considerably from community to community, throughout the first half of the 20th century.[244] It was characterized by informal procedures and individual accommodations reminiscent of the justice dispensed by the local alcalde in early California. The informal handling of juvenile offenders was a matter of some pride in many counties, particularly in the rural counties, where the local law enforcement and court personnel often knew the child, his or her parents, and a great deal about the family's background.[245] Edwin Lemert offers the following explanation of the early informality in juvenile procedures:

> Such officials not infrequently are part of a web of reciprocal social and economic relationships that may involve parents, relatives, and friends of youths coming to their attention. The fact that "word gets around" and that law agents have to "live with" or face these people daily inclines them to handle youth gingerly or to be sincerely concerned with keeping the youth and his family from embarrassment and avoidable difficulty. Furthermore, in

> some areas the detached residence of sheriffs' deputies more or less requires that they be judges as well as policemen. The sheriff himself, as an elective official, is usually more interested in serving people and keeping peace between them than in making arrests. There are also indications that cultural differences dispose police and probation officers in ranch and agricultural counties to greater tolerance for youthful deviance along certain lines than is true for urban areas. Paradoxically, there is also a tendency for people in these communities to be more punitive than their urban counterparts when they do take formal action, or when certain kinds of offenses are committed.[246]

Even though California had experienced a half century of juvenile court law and procedure, the informality of the early, alcalde-dominated California justice system was notably evidenced in the juvenile court as late as 1958 in the following examples:

- A 1957 probation survey of 36 responding judges indicated that, in juvenile matters, two-thirds of them customarily relied on prehearing conferences, which were held ex parte and in camera with the probation officer only—to the exclusion of parents, arresting officers, defense attorney, and school officials.[247]
- About half of the judges surveyed saw their role in juvenile matters as "talking with and counseling the parents and the child"—the least-mentioned task was ruling on evidence and objections.[248]
- A 1958 study indicated that judges in 46 counties routinely granted continuances in juvenile matters as a dispositional tool; this was more prevalent in the rural counties.[249]
- In 1958, no more than 22 judges statewide held statutorily mandated detention hearings prior to detaining youth. And when such a hearing was held, it was often in the presence of the probation officer alone.[250]

Many judges, particularly in the small counties, embraced the *parens patriae* role and, as one judge explained, acted "like a father who takes immediate action when his son is in trouble, without undue concern for legalities."[251] Others, uncomfortable or uninterested in juvenile proceedings, delegated their responsibilities to probation officers unless the case was very serious or high profile.[252] In either case the result was a juvenile court operating informally with an extralegal approach.[253]

Little Impact From Judicial Review

Judicial review had very little impact on the uniform development of the California juvenile court in the first half of the 20th century.[254] There were several reasons for this:

- The juvenile court was so specialized—in its operational procedures, clientele, and conception—that the effect of an appellate opinion on a juvenile court judge operating under different conditions, with different clientele, was nominal at best.[255]
- There was an explicit sanctioning of procedural disparities in some of the appellate opinions themselves.[256] For example, in *Marr v. Superior Court,* the court was dismissive of a claim that the juvenile court did not have jurisdiction over a child because of a defect in an allegation of the petition, stating, "nicety of procedure is not required in juvenile court matters."[257]
- There were very few juvenile court appeals. Between 1906 and 1960 there were only 115, an average of about 2 appeals per year.[258]
- The appeal process itself was hampered by records so sparse that appellate court officers could not make informed decisions.[259]
- Only a few of the appellate cases were directly relevant to the organization and operation of the courts.[260]

But during the decade between 1950 and 1960 some appellate judges indicated concern about the direction of the California juvenile court. In reversing an order to transfer two juvenile court cases from Los Angeles County to Ventura County, the appel-

late court stated: "While proceedings in the juvenile court are for the welfare of boys and girls, still they deprive individuals of liberty. Therefore, the administration of this law must conform to constitutional guarantees of due process of law. From the record in these two cases it is hard to say who testified, who evaluated the testimony, if any, or who made the findings; or whether or not we have here some sort of assembly-line administration of the juvenile court law."[261] And in *In re Cardenas Contreras,* the appellate court complained in frustration:

> While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be a conviction of crime, nevertheless, for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason. Courts cannot and will not shut their eyes and ears to everyday contemporary happenings. [¶]It is common knowledge that such an adjudication when based upon a charge of committing an act that amounts to a felony, is a blight upon the character of and is a serious impediment to the future of such minor. . . . True, the design of the Juvenile Court Act is intended to be salutary, and every effort should be made to further its legitimate purpose, but never should it be made an instrument for the denial to a minor of a constitutional right or of a guarantee afforded by law to an adult.[262]

This appellate grumbling was a harbinger of reform to come. Because the Legislature had responded piecemeal to problems with the juvenile law from 1915 to 1960, the existing law was an unwieldy checkerboard of inconsistencies, duplications, and archaic practices unresponsive to the needs of a more modern, more populated California.[263] To illustrate, between 1941 and 1959, 53 new provisions were added to the law and 149 amendments were passed, but only 20 provisions were repealed.[264]

ESTABLISHMENT OF THE CALIFORNIA YOUTH AUTHORITY

Among the significant new provisions during those years was the establishment of the California Youth Authority (CYA) in 1941.[265] Intended to "protect society by substituting training and treatment for retributive punishment of young persons found guilty of public offenses,"[266] the legislation directed criminal courts to commit youthful offenders to an administrative authority rather than to prison and gave juvenile courts the discretion to do the same.[267] Though inspired by the American Law Institute's model Youth Correction Authority Act, California's legislation diverged from the model in some meaningful ways that affected the state's juvenile courts.[268] First, commitments under California's law were not mandatory above a specified age; they were optional under the joint jurisdiction of the juvenile courts and the CYA.[269] Second, probation was kept within the local court system rather than converted to a state-controlled system.[270] Shortly after the CYA was launched, numerous problems with the Whittier State School for Boys surfaced and were made public, including a serious problem with runaways, two suicides, and a significant problem with top management turnover.[271] Public concern led to the transfer of the administration of all three correctional schools (Whittier, Preston, and Ventura) to the CYA in 1942.[272] Thus, while the CYA had been formed with the idea of providing individualized treatment to youthful offenders, it was almost immediately saddled with the administration of three institutional albatrosses that quickly seized the bulk of its time and energy.[273]

The Youth Authority law withstood a constitutional challenge in 1943, when the Supreme Court held in *In re Herrera* that the law was not unconstitutionally discriminatory even though a minor could remain in custody longer than an adult convicted of the same offense and that an offender under 23 years of age could be committed to the Authority.[274] The court reasoned:

> The great value in the treatment of youthful offenders lies in its timeliness in striking at the roots of recidivism. Reaching the offender during his formative years, it can be an impressive bulwark against the confirmed criminality that defies rehabilitation, for it is characteristic of youth to be responsive to good influence as it is susceptible to bad. Youth

> does not of course end abruptly to be superseded by maturity, and maturity comes more slowly to some than to others. It is a matter of practical necessity, however, and one of legislative discretion, to fix theoretical lines where there are no real ones, and there is no abuse of such discretion when the theoretical lines are not unreasonable.[275]

1949 ATTEMPT TO REVISE THE JUVENILE COURT LAW

An attempt to revise the juvenile court law in 1949 under the auspices of the Special Crime Study Commission on Juvenile Justice failed, possibly because of a particularly tense political year in Sacramento, together with an inexperienced commission.[276] But another likely reason for the failure was the magnitude of the commission's proposal: "to convert the juvenile court into a family court, with district rather than county jurisdiction."[277] Among the recommendations of the commission were

- creation of a family and children's court to "provide uniformly competent and socially informed judicial services throughout the State for all cases where the welfare of families, children and youth is the question at issue";[278]
- a Judicial Council study of the conduct and administration of justice by juvenile courts with recommendations for the improvement of services;[279]
- denial of bail to minors to "clearly establish the right and responsibility of the judge of the juvenile court to protect the welfare of a minor by detaining or releasing him only under conditions conducive to his welfare and to clarify the law by affirming that there is no right to obtain the release of a minor other than by application to the juvenile court and with the court's approval that said release would be in the interests of the minor's welfare";[280]
- Judicial Council consideration, in its study of the administration of justice in the juvenile court, of "whether provision should be made for a youth court with exclusive jurisdiction over persons between the ages of sixteen and twenty" who are charged with a criminal offense;[281] and
- creation of child-care centers at local schools "to furnish adequate supervision to the children of working mothers."[282]

There was strong resistance to the proposal for the creation of a family and children's court, notably from Governor Earl Warren, who feared the plan would lead to fragmentation of the court system.[283] Phil S. Gibson, the Chief Justice of the California Supreme Court and Chair of the Judicial Council, shared his concern.[284] So while many of the commission's recommendations reached the Legislature, they arrived not as a unified package but as numerous separate bills, which were dealt with in a piecemeal fashion and continued the pattern of "legislation by amendment."[285] One of the resolutions adopted by the Legislature requested that the Judicial Council "undertake a study of the conduct and administration of justice by the juvenile court in this State, and the feasibility and desirability of enlarging the jurisdiction thereof."[286] The resolution did not include a request to study the concept of creating a youth court.[287] The Judicial Council complied by setting up a standing committee to conduct the study and, in 1954, concluded that, while there was an "urgent need for improvement in the processing, treatment, care and training of juveniles . . . no fundamental change in the Juvenile Court Law or in its application or administration by the courts appears warranted."[288]

Notably, a primary focus on the protection of the community as opposed to the protection of the child was still present in 1949. In its final report, the Special Crime Study Commission noted that "in the attempt to rehabilitate and reeducate we must not forget, in our interest in the particular child, the requirement that the community must be protected. Unreasonable chances should not be taken at the expense of the safety or protection of the citizenry."[289] And it further cautioned: "We assume, perhaps too readily, that everything can be reached through envi-

ronmental conditions. This is not an entirely sound approach. Natural endowment, that which comes with birth, and its potential capacity for good or evil cannot be entirely disregarded."[290] On the other hand, the commission recognized the need to improve the environmental conditions of children and, in a startling example of prescience, acknowledged the need for "more attention to environmental conditions during early childhood and the period of adolescence."[291]

INCREASING PRESSURE FOR REFORM

By the late 1950s reform for the juvenile court was in the wind—the court simply had failed to evolve with modern conditions and the need for change was critical. A number of issues particularly concerned policymakers and advocates. The fabric of *parens patriae* was fraying. While the alcalde-type judge, who made decisions without concern for due process, was a specter of the past, significant problems remained. Cases were heard too quickly, too many children were being detained, the media was pouncing on cases and publishing names, and employers, including the armed services, were discriminating against children with juvenile court records.[292] Procedural issues—detention policy, juvenile arrest practices, the legal rights of juveniles (especially the right to counsel), and management of the burgeoning number of juvenile traffic offenses—dominated the calls for reform.[293]

The question of legal rights for children was a touchstone issue in the battle for reform. There was a movement afoot to address the "arbitrariness" of juvenile judges by challenging the traditional concept of the juvenile court as "a parental surrogate acting in loc[o] parentis, with the nonpunitive objectives of reformation and the inculcation of 'habits of industry' advanced as the paramount justification for its expansive jurisdiction and summary procedures."[294] Judicial officers largely conceded that juveniles deserved the right to a hearing and notice of the hearing but denied the need for additional rights—to counsel, to warnings against self-incrimination, to bail, to a jury trial, and to other rights guaranteed in the Constitution—because of the "benevolent purposes" of the court.[295]

Then, in 1956, the California Supreme Court weighed in on the issue in *People v. Dotson,* embracing the *parens patriae* doctrine in holding that, while a defendant in a criminal proceeding was entitled to legal representation at every stage of the proceeding, juvenile court proceedings were not criminal in nature, so the fact that a minor was not represented by counsel was not a denial of due process unless the minor was taken advantage of or treated unfairly, resulting in a deprivation of rights.[296]

One of the first to take up the gauntlet against the juvenile court status quo in California was Robert Fraser, an Orange County attorney who took on representation of a girl held in detention without access to her mother or Fraser because she was considered a material witness against her father in a criminal child molestation case.[297] Fraser was finally successful with a petition for writ of habeas corpus, but not until the child had testified against her father.[298] Fraser found that the Welfare and Institutions Code included few legal rights for children. Out of concern for the lack of legal rights for children he started appealing cases similar to the first, without good results. Finally he persuaded the Orange County Bar Association to introduce a resolution at the 1958 Conference of State Bar Delegates to amend the juvenile court law to give children the same rights afforded a defendant in a criminal case:[299] jury trials, right to counsel, bail, criminal rules of evidence in contested hearings, and proper notice for all proceedings.[300] The resolution passed but languished because the State Bar Association failed to act on it.

1957 Governor's Special Study Commission on Juvenile Justice

Meanwhile, attorneys all over the state were expressing frustration. The juvenile court made them feel that, although they were technically "allowed" in court, they had no real right to be present in juvenile court proceedings. Many also disagreed with the informal, backroom procedural approach that governed juvenile cases.[301] So when Governor Goodwin J.

Knight appointed a Special Study Commission on Juvenile Justice in 1957 and charged it with exploring the need for a revision of the juvenile court law, there was some enthusiasm for the commission's work.[302] Governor Edmund (Pat) Brown renewed the commission appointments when he took office in 1958, and the commission issued its final report in November 1960.[303]

The commission found significant problems with the existing juvenile court system: there were no "well-defined, empirically derived standards and norms to guide juvenile court judges, probation, and law enforcement officials in their decision making."[304] Instead, juvenile cases were being decided under a wide variety of systems and policies that seemed "to depend more upon the community in which the offense [was] committed than upon the intrinsic merits of the individual case."[305] Other problems were cited:

- Basic legal rights were not being uniformly or adequately protected.[306]
- The relative independent status of juvenile justice agencies led to inconsistencies in philosophy, coordination, and administration.[307]
- The system of rehabilitative services was ineffective, in part because of a large increase in the number of children in the system.[308]
- Children were being excessively detained, often when unwarranted.[309]
- There were numerous inconsistencies and ambiguities within the juvenile court law.[310]

The commission's report made 31 recommendations that, if implemented, were bound to radically change the juvenile court system. Perhaps most important, it recommended three categories for juvenile court jurisdiction: (1) dependent, neglected, or abandoned children; (2) children whose behavior "clearly implies a tendency towards delinquency," such as truants, runaways, and incorrigibles; and (3) children who violate state, local, or federal criminal laws.[311] Giving "dependent" children a category of their own was truly a major change. Before, the differentiation was merely "implied" in the law by the requirement that neglected children were to be segregated from delinquent children in detention facilities.[312]

Another revolutionary recommendation was that every juvenile and his or her parents should be advised by the court of their right to counsel and right to the appointment of counsel if indigent.[313] In so recommending, the commission commented, "We find no grounds to support the contention that the presence of counsel will destroy the protective philosophy of the juvenile court or seriously alter the informality of the proceedings."[314]

The report's other recommendations included confidential juvenile court proceedings and filings, recording of all stages of the juvenile court hearing, notice to parents of every new petition or supplemental petition, bifurcated hearings, elimination of "double jeopardy" for minors, minimum procedural rules, imposition of minimum qualifications for referees, requirement of detention hearings within 48 hours of detaining a child, placement of probation services under county administration, establishment of a Judicial Council advisory board of juvenile court judges to develop rules of practice and procedure, and provision for statewide and regional conferences for juvenile court judges and referees.[315]

In making its recommendations, the commission relied on a set of principles consistent with the basic juvenile court philosophy, which had widespread public acceptance. Among them were the following:

- The juvenile court should avoid intervening in the parent-child relationship unless there is a sound basis for such action.
- Children and parents have the right to a fair hearing and to the protection of their legal and constitutional rights.
- Children should be protected from unnecessary separation from their parents.
- The juvenile court law should be uniformly applied throughout the state, with clearly defined procedures.

- No child, whether delinquent or dependent, should be taken into custody or detained without reasonable cause.
- The juvenile court should have reasonable assurance that meaningful rehabilitation services will be provided in the cases of dependent or delinquent children.
- The juvenile court must adequately protect the child and the community.
- The juvenile court should work to increase the status of probation departments and to take advantage of the clinical knowledge and skills of treatment specialists.[316]

Finally, the commission proposed a juvenile court law statute.[317] The commission noted, however, that "there will remain a need to develop further details of practice and procedure. In our opinion, this can best be accomplished by the courts themselves utilizing the rulemaking powers conferred upon the Judicial Council by the Constitution."[318]

PASSAGE OF THE 1961 ARNOLD-KENNICK JUVENILE COURT LAW

After overcoming significant resistance from probation, judges, police, and others, in part by agreeing to compromises attractive to the various stakeholders,[319] the commission's legislation was introduced as Senate Bill 332 in the 1961 legislative session.[320] Legislators felt ambivalent at best and were generally skeptical about the proposed changes.[321] But the challenge of gaining support for the bill got a boost from an unexpected quarter when Judge Richard Eaton of the Shasta County court testified before the Senate Judiciary Committee that he expected youngsters who appeared before him to admit to the charges against them. If they did not, his practice was to send them to detention until they were ready to provide the requisite admissions.[322] He also opined that the presumption of innocence in juvenile proceedings "produces a result as absurd as any other presumption of law contrary to fact."[323] Dumbfounded senators quickly moved the bill out of committee.[324] It passed in the Legislature and was signed by the Governor on July 14, 1961.[325] Codified at Welfare and Institutions Code sections 500–945, the new law, which became known as the Arnold-Kennick Juvenile Court Law, took effect on September 15, 1961.[326]

The landmark legislation was termed "the earthquake of 1961" by one judge.[327] It dramatically changed the structure of the juvenile courts, probation departments, and even police and sheriff's departments and public defender's offices.[328] Suddenly the juvenile court was run like a court rather than like a counseling service or an administrative agency.[329] Minors were afforded important new rights in the statute, including

- significant new notice provisions, for both a minor of 14 and older and his or her parents, at every stage of the proceedings;[330]
- the right to be represented at every stage of the proceedings by counsel and, for indigent minors charged with misconduct that would have constituted a felony if committed by an adult, mandatory appointment of counsel;[331] and
- the right to proof of the allegations in the petition by a preponderance of legally admissible evidence at a hearing before being held as a dependent or delinquent under the law.[332]

The expanded purpose of the new law was

> to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents.[333]

An order declaring a minor to be a ward of the juvenile court was not to be deemed a conviction of

a crime, nor could a juvenile court proceeding be deemed a criminal proceeding.[334]

So here for the first time we began to see movement toward the "best interest of the child" standard and an easing of the rhetoric of intervention to prevent criminality. Protections had been built into the legislation both for the rights of the children and for their parents, and there was a growing focus on preserving the family relationship wherever possible. A true revolution had begun.[335]

All did not eagerly embrace the law, as this article in the *Merced County Star* demonstrates:

Judges Holding Back on New Juvenile Court Law

> There was every indication that [two judges] along with the county probation department will not fully abide by the law until challenged by the Supreme Court. [One judge] stated, "We have paid attention to the new law except in felony cases. Eventually we will be challenged . . . ."[336]

With time those bound by the law adjusted to its requirements, though to this day many local jurisdictions, while conforming to the broad strokes of the law, have marked local proceedings with their own unique stamp, often commensurate with the personality of the judge, the relationship between social services and the court, or other factors that vary from jurisdiction to jurisdiction.

Six years after California passed the Arnold-Kennick law, the U.S. Supreme Court issued its decision in *In re Gault,* holding, largely in line with California's new legislation, that at the jurisdictional phase of juvenile court proceedings due process compelled (1) adequate notice; (2) advice to the minor and his or her family of the right to counsel, including appointment of counsel if unable to afford to pay for an attorney; and (3) a privilege against self-incrimination and the right to confront and cross-examine witnesses.[337] The Court also suggested that there be a right to appeal, to an adequate record of the proceedings, and to a finding by the court or a statement of reasons for its decision, in an effort to avoid saddling the reviewers on appeal with the need to reconstruct the record.[338] It further approved of the handling of juveniles separately from adults, of the confidentiality of records, and of the need to avoid stamping a "delinquent" with the stigma of criminality.[339] The Court specifically criticized the juvenile court's use of the *parens patriae* doctrine in the *Gault* case to "rationalize the exclusion of juveniles from the constitutional scheme,"[340] opining that "its meaning is murky and its historic credentials are of dubious relevance."[341] And, in a sharper colloquy, the Court stated:

> Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. . . . The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.[342]

But though *Gault* has been credited with signaling the end of the *parens patriae* approach in delinquency proceedings,[343] the truth is not quite so simple. California's juvenile courts have continued to struggle with the challenge of maintaining a child-friendly informal atmosphere in the courtroom while ensuring that each child or youth entering the system is accorded every right guaranteed by the state and federal Constitutions. Growing public sentiment against youth violence has led to increasing pressure to more stringently punish youthful offenders. Many are being tried as adults and sentenced to adult prisons for the crimes they have committed. But other detention models and dispositional approaches are being explored. Juvenile court judges—both in the dependency and delinquency courts—still grapple with their dual charge of protecting the community while at the same time acting in the best interest of the children and youth who come before them.

The decades from 1960 to the beginning of the 21st century bristled with exciting reforms in the

juvenile court. New discoveries about child abuse dramatically reshaped the dependency system. There is promise of positive change in the delinquency system based on new research on the adolescent brain. State trial court funding and unification in California have had significant impact on the trial courts, including the juvenile court. And the Judicial Council has increasingly taken an active role in partnering with both the trial and appellate courts to improve the administration of justice for cases involving children. But the four decades from *Gault* to the 21st century are a story for another day.

NOTES

1. *Ex parte* The Queen of the Bay et al., 1 Cal. 157, 157–58 (1850).

2. *Id.* at 158.

3. *Id.*

4. Nathaniel Bennett, *Preface* to 1 Reports of Cases Determined in the Supreme Court of the State of California, at v, vii (1851).

5. William J. Palmer & Paul P. Selvin, The Development of Law in California 3–13 (West Publ'g Co. 1983) (1954).

6. *Id.* at 11.

7. *Id.; see also* Bennett, *supra* note 4, at vii.

8. David J. Langum, Law and Community on the Mexican California Frontier 30, 37–40 (Univ. of Okla. Press 1987).

9. *Id.* at 30.

10. *Id.* at 30–31.

11. Edwin M. Lemert, Social Action & Legal Change: Revolution Within the Juvenile Court 32 (Aldine Publ'g Co. 1970).

12. *See* 1850 Cal. Stat. *passim*.

13. Act of Feb. 28, 1850, ch. 22, 1850 Cal. Stat. 76.

14. Act of Apr. 17, 1850, ch. 103, 1850 Cal. Stat. 254 (establishing California's community property system).

15. Act of Apr. 13, 1850, ch. 95, 1850 Cal. Stat. 219 (adopting the common law "so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of the State of California").

16. Act of Apr. 16, 1850, ch. 99, § 4, 1850 Cal. Stat. 229, 230.

17. *Id.* § 3, 1850 Cal. Stat. at 229.

18. Act of Sept. 9, 1850, ch. 50, 9 Stat. 452 (1850) (admitting California into the Union), *reprinted in* The Constitutions of California, the United States, and Related Documents, 2001–02 Edition 93 (Cal. State Senate 2001).

19. Angus Macfarlane, History of California's Juvenile Court, ch. 33, at 7 (n.d.) (unpublished manuscript, on file with the *Journal of the Center for Families, Children & the Courts*).

20. *Id.* The San Francisco Orphan Asylum changed its name to Edgewood in 1944 and has been serving children continuously for 153 years, making it the oldest continuing charity on the West Coast. *Id.* at 8.

21. *Id.* ch. 33, at 7–10, ch. 34, at 1–5.

22. Act of Mar. 31, 1870, ch. 385, 1869–1870 Cal. Stat. 530; *see* 1 Cal. Jur. *Adoptions* § 2, at 418–19 (1921).

23. 1 Cal. Jur., *supra* note 22, at 419.

24. *Id.*

25. Langum, *supra* note 8, at 241. This makes sense because the Mexican judicial system derived from Roman civil law through Spain. *Id.* at 145.

26. *Id.*

27. *See* Infoplease, Adoption Trends, *at* www.infoplease.com/ipa/A0881281.html (stating that 17 states enacted adoption legislation between 1851 and 1873; by 1929 all states had adoption statutes).

28. Lemert, *supra* note 11, at 33.

29. *Id.* at 34.

30. Act of Mar. 30, 1878, ch. 520, § 4, 1877–1878 Cal. Stat. 812, 813.

31. Act of Mar. 15, 1883, ch. 91, 1883 Cal. Stat. 377.

32. *Id.; see also* Lemert, *supra* note 11, at 34.

33. Macfarlane, *supra* note 19, ch. 34, at 3.

34. John E.B. Myers, A History of Child Protection in America 135 (Xlibris 2004).

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35. *Id.*

36. *Id.*

37. Macfarlane, *supra* note 19, ch. 34, at 4.

38. *Id.* at 3–4.

39. *Id.* at 4.

40. *See id.* at 6–7.

41. Act of Mar. 30, 1878, ch. 520, § 1, 1877–1878 Cal. Stat. 812, 812.

42. *Id.* § 2.

43. *Id.* § 3, 1877–1878 Cal. Stat. at 812–13.

44. *Id.* § 4, 1877–1878 Cal. Stat. at 813.

45. Act of Mar. 30, 1878, ch. 521, 1877–1878 Cal. Stat. 813.

46. *Id.* § 3, 1877–1878 Cal. Stat. at 814.

47. Act of Apr. 25, 1851, ch. 131, 1851 Cal. Stat. 515.

48. Act of May 10, 1854, ch. 39, 1854 Cal. Stat. 44.

49. Act of Mar. 16, 1855, ch. 46, 1855 Cal. Stat. 50.

50. Act of Apr. 10, 1858, ch. 171, 1858 Cal. Stat. 124.

51. Act of Mar. 17, 1860, ch. 119, 1860 Cal. Stat. 86.

52. Act of Apr. 15, 1858, ch. 209, 1858 Cal. Stat. 166.

53. *Id.* § 10, 1858 Cal. Stat. at 169.

54. Police courts were created under the authority of section 8½ of article XI of the California Constitution and derived jurisdiction from city charters—the jurisdiction varied according to the charter provisions. *See* Larry L. Sipes, Committed to Justice: The Rise of Judicial Administration in California 120 (Admin. Office of the Cal. Courts 2002). Police courts had "exclusive jurisdiction" of all misdemeanors punishable by fine or by imprisonment and all violations of city ordinances in cities where there was a police court. *See* Act of Mar. 5, 1901, ch. 81, 1901 Cal. Stat. 95. Appeals from police court decisions were taken to the superior court. *Id.* § 11, 1901 Cal. Stat. at 97.

55. Courts of sessions were established in every county and consisted of the county judge acting as presiding judge and two justices of the peace acting as associate justices. The court of sessions had jurisdiction over all public offenses committed in the county except murder, manslaughter, and arson, which were transferred to the district court. *See* Act of Mar. 11, 1851, ch. 1, §§ 62–63, 66–67, 1851 Cal. Stat. 2, 18–19.

56. Act of Apr. 15, 1858, ch. 209, § 10, 1858 Cal. Stat. at 169.

57. Lemert, *supra* note 11, at 33.

58. *Id.* at 32–33; Act of Apr. 18, 1860, ch. 234, 1860 Cal. Stat. 200.

59. Lemert, *supra* note 11, at 32–33.

60. *Id.*

61. *Id.*

62. *Id.* at 33. In 1876, the U.S. Navy transferred the *Jamestown,* a training ship, to the City of San Francisco to supplement the San Francisco Industrial School by providing training in seamanship and navigation for boys of eligible age. But by 1879 the ship was returned to the navy because of mismanagement amid "a hue and cry that the *Jamestown* was a training ship for criminals." Cal. Youth Auth., About the CYA (State of Cal. 2000), *at* www.cya.ca.gov/About/history.html.

63. *Wayward Sarah,* S.F. Chron., Sept. 8, 1887, at 4; *see* Macfarlane, *supra* note 19, ch. 36, at 4.

64. Daniel Macallair, *The San Francisco Industrial School and the Origins of Juvenile Justice in California: A Glance at the Great Reformation,* 7 U.C. Davis J. Juv. L. & Pol'y 1, 37–38 (Winter 2003).

65. *Id.* at 34–35.

66. *A Boy Stabber,* S.F. Chron., Jan. 18, 1888, at 3; *see* Macfarlane, *supra* note 19, ch. 36, at 7.

67. *Youthful Depravity,* S.F. Chron., Feb. 7, 1888, at 3; *see* Macfarlane, *supra* note 19, ch. 36, at 7.

68. Macfarlane, *supra* note 19, ch. 36, at 7.

69. *Id.*

70. 1 Tenth Census of the United States, 1880, pt. 2, at 563. At that time the actual number of children in California between the ages of 5 and 17 was 216,393. *Id.*

71. Macfarlane, *supra* note 19, ch. 36, at 7.

72. Act of Mar. 11, 1889, ch. 103, 1889 Cal. Stat. 100.

73. Act of Mar. 11, 1889, ch. 108, 1889 Cal. Stat. 111.

74. Act of Mar. 11, 1889, ch. 103, §§ 2, 4–6, 1889 Cal. Stat. at 100–01.

75. *Id.* §§ 3, 6, 1889 Cal. Stat. at 101.

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76. *Id.* § 8, 1889 Cal. Stat. at 102.

77. *Id.* § 9.

78. *Id.* § 12.

79. *Id.* § 15, 1889 Cal. Stat. at 103.

80. *Id.* § 18, 1889 Cal. Stat. at 104.

81. *Id.* § 19, 1889 Cal. Stat. at 104–05.

82. Act of Mar. 11, 1889, ch. 108, §§ 4–5, 30, 1889 Cal. Stat. 111, 112–13, 120.

83. *Id.* § 14, 1889 Cal. Stat. at 115.

84. *Id.* § 16.

85. *Id.*

86. *Id.* § 17.

87. *Id.* § 18, 1889 Cal. Stat. at 116.

88. *Id.* § 20.

89. Act of Mar. 23, 1893, ch. 222, §§ 15, 1893 Cal. Stat. 328, 332.

90. *Id.* at §§ 1, 9, 1893 Cal. Stat. at 330.

91. *Id.* § 9, 1893 Cal. Stat. at 330.

92. *Id.* § 10.

93. *Id.* § 11, 1893 Cal. Stat. at 331.

94. Macallair, *supra* note 64, at 56.

95. *Ex parte* Ah Peen, 51 Cal. 280 (1876).

96. *Id.*

97. *Id.* at 281.

98. *Id.* (emphasis in original).

99. *Ex parte* Becknell, 51 P. 692, 693 (Cal. 1897).

100. *Id.*

101. *Id.*

102. *In re* Daedler, 228 P. 467 (Cal. 1924).

103. *See In re* Javier A., 206 Cal. Rptr. 386, 395–430 (Cal. Ct. App. 1984) for a lengthy discussion on the debate about the right to a jury trial for juveniles. The case traces the history of the issue from early English common law through modern California juvenile court law.

104. Lemert, *supra* note 11, at 36.

105. *Id.*

106. *A Child Confined in a County Jail: Nine-Year-Old Boy's Fate,* S.F. Chron., Sept. 24, 1897, at 4; *see* Macfarlane, *supra* note 19, ch. 37, at 4.

107. Lemert, *supra* note 11, at 34–35.

108. *Id.* at 35.

109. *Id.*

110. *Id.*

111. Bernardine Dohrn, *The School, the Child, and the Court, in* A Century of Juvenile Justice 267, 267–68 (Margaret K. Rosenheim et al. eds., Univ. of Chicago Press 2002).

112. *Id.*

113. Michael Grossberg, *Changing Conceptions of Child Welfare in the United States, 1820–1935, in* A Century of Juvenile Justice, *supra* note 111, at 3, 29.

114. *Id.* at 29.

115. Act of Mar. 28, 1874, ch. 516, 1873–1874 Cal. Stat. 751.

116. Grossberg, *supra* note 113, at 29.

117. *Id.*

118. Dohrn, *supra* note 111, at 270–71.

119. *Id.* at 272.

120. *Id.*

121. *Id.* at 272–73.

122. *Id.* at 272; Charles Larsen, The Good Fight 28–29 (Quadrangle Press 1972).

123. Larsen, *supra* note 122, at 28.

124. *Id.* at 28–29.

125. *Id.* at 29.

126. *Id.*

127. David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction, in* A Century of Juvenile Justice, *supra* note 111, at 42.

128. Macfarlane, *supra* note 19, ch. 37, at 3, 8.

129. *Id.* ch. 37, at 8.

130. Tanenhaus, *supra* note 127, at 42.

131. *Id.* at 42–43 (citations omitted).

NOTES

132. The Illinois Juvenile Court offered a jury trial to youthful offenders for more than 60 years. The right to a jury trial was eliminated in Illinois with the passage of its Juvenile Court Act of 1966. *See* People *ex rel.* Carey v. White, 357 N.E.2d 512, 514 (Ill. 1976).

133. Act of Apr. 21, 1899, 1899 Ill. Laws 131, *reprinted in* 2 Children and Youth in America: A Documentary History, 1866–1932, at 506 (Robert H. Bremner ed., Harvard Univ. Press 1971) [hereinafter 2 Children and Youth in America].

134. Act of Apr. 21, 1889, § 21, 1899 Ill. Laws at 137.

135. 2 Children and Youth in America, *supra* note 133, at 357 (quoting *Proceedings of the Conference on the Care of Dependent Children Held at Washington, D.C., January 25, 26, 1909,* S. Doc. No. 60-721, at 17–18 (1909)).

136. *Id.*

137. *Boy Criminal: He Perplexes Court,* L.A. Times, May 13, 1903, § 2, at 2; *see* Macfarlane, *supra* note 19, ch. 38, at 9.

138. I.J. Shain & Walter R. Burkhart, Governor's Special Study Comm'n on Juvenile Justice, A Study of Juvenile Justice in California 4 (State of Cal. 1960).

139. Macfarlane, *supra* note 19, ch. 41, at 1.

140. *Id.*

141. Lemert, *supra* note 11, at 37–38.

142. *Id.* at 38. In a 1904 newspaper article on San Francisco's only probation officer, a reporter complained about the unfunded status of probation officers:

> So it goes, day after day and month after month. All the great credit that is due Miss Stebbins for her humanitarian work should be given her. She is the only probation officer in San Francisco; she is not paid by the municipality. The expenses of her department are paid by several philanthropists. Los Angeles, with but little more than one-third of the population of San Francisco, had three probation officers regularly in the employ of the municipality. However, Miss Stebbins does not despair. She goes about her work with unfailing enthusiasm and interest, with a friendly hand here and a kind word there, bringing the breath of hope and ambition and help to many a dark life, waiting for a time to come when the community shall at last appreciate the work that is being done for the regeneration of the criminal elements, and shall afford her the assistants she has earned and needs to carry on her work. (*The Girl Probation Officer of the Juvenile Court,* S.F. Chron., May 1, 1904 (Magazine), at 4.)

That same article noted that 1,000 cases came through the San Francisco juvenile court in its first eight months of operation and that 36 of those cases involved girls. *Id.*

143. Act of Feb. 26, 1903, ch. 43, § 1, 1903 Cal. Stat. 44, 44.

144. *Id.*

145. *Id.*

146. *Id.* § 2, 1903 Cal. Stat. at 44–45.

147. *Id.*

148. *Id.* § 3, 1903 Cal. Stat. at 45.

149. *Id.* § 4.

150. *Id.* § 5, 1903 Cal. Stat. at 46.

151. *Id.* § 6.

152. *Id.*

153. *Id.*

154. *Id.* § 7, 1903 Cal. Stat. at 46–47.

155. *Id.* §§ 8–9, 1903 Cal. Stat. at 47.

156. *Id.* § 9, 1903 Cal. Stat. at 47–48.

157. *Id.* § 12, 1903 Cal. Stat. at 48.

158. *Id.* § 13.

159. Lemert, *supra* note 11, at 38.

160. *The Need of a Juvenile Court,* San Diego Union, July 1, 1903, at 6; *see* Macfarlane, *supra* note 19, ch. 38, at 10.

161. Lemert, *supra* note 11, at 38.

162. Act of Mar. 22, 1905, ch. 610, §§ 11–15, 1905 Cal. Stat. 806, 810–12.

163. Juvenile Court Law, ch. 133, 1909 Cal. Stat. 213.

164. *Id.* § 1(11).

165. *Id.* § 1(13), 1909 Cal. Stat. at 214.

166. *Id.* § 1(15).

167. *Id.* § 1, 1909 Cal. Stat. at 213.

168. *Id.* § 5, 1909 Cal. Stat. at 216.

169. *Id.* §§ 10–10z, 1909 Cal. Stat. at 217–18.

170. *Id.* § 20, 1909 Cal. Stat. at 223–24.

171. *Id.,* 1909 Cal. Stat. at 224.

172. *Id.*

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173. *Id.* § 23.

174. *Id.*

175. *Id.* § 25, 1909 Cal. Stat. at 225.

176. *Id.* § 27, 1909 Cal. Stat. at 226.

177. *Id.* § 18, 1909 Cal. Stat. at 221–22.

178. *Id.,* 1909 Cal. Stat. at 222.

179. Nicholl v. Koster, 108 P. 302, 303 (Cal. 1910).

180. *See* Marvin Ventrell, *Evolution of the Dependency Component of the Juvenile Court,* 49 Juv. & Fam. Ct. J. 17 (Fall 1998).

181. Lemert, *supra* note 11, at 39.

182. *Id.* (quoting 5 Transactions of the Commonwealth Club of California 214 (1910)).

183. *Id.*

184. *Id.*

185. *Id.*

186. *In re* Mabel Maginnis, 121 P. 723, 724 (Cal. 1912).

187. *Id.* at 726.

188. Lemert, *supra* note 11, at 40.

189. Act of Apr. 5, 1911, ch. 369, 1911 Cal. Stat. 658.

190. Act of June 16, 1913, ch. 673, 1913 Cal. Stat. 1285.

191. Lemert, *supra* note 11, at 40.

192. Act of Apr. 5, 1911, § 1, 1911 Cal. Stat. at 658.

193. Moore v. Williams, 127 P. 509, 510 (Cal. Ct. App. 1912).

194. *Id.*

195. *Id.* at 513.

196. *Id.*

197. *Id.* at 510.

198. Lemert, *supra* note 11, at 40.

199. *Id.*

200. *Id.* at 41 (quoting 5 Transactions of the Commonwealth Club of California 248 (1910)).

201. *Id.*

202. Juvenile Court Law, § 1(12), 1915 Cal. Stat. 1225, 1226.

203. Act of June 14, 1913, ch. 401, 1913 Cal. Stat. 857.

204. Juvenile Court Law, § 8(e), 1915 Cal. Stat. at 1232.

205. *Id.*

206. *Id.* §§ 6, 7, 1915 Cal. Stat. at 1229–30.

207. *Id.* § 12, 1915 Cal. Stat. at 1235.

208. *Id.* § 13.

209. *Id.* §§ 1(14), 15–15g, 1915 Cal. Stat. at 1226, 1236–38.

210. *Id.* § 17b, 1915 Cal. Stat. at 1239–40.

211. *Id.* § 19, 1915 Cal. Stat. at 1242.

212. *Id.*

213. It was not until 1971 that candidates for referee positions were required to have been lawyers for at least five years before their appointment. Act of Aug. 19, 1971, ch. 640, § 1, 1971 Cal. Stat. 1258, 1259–60 (amending Cal. Welf. & Inst. Code § 553 (1972)).

214. Juvenile Court Law, § 19, 1915 Cal. Stat. at 1242.

215. *Id.* § 24, 1915 Cal. Stat. at 1248.

216. *Id.* §§ 8–9, 1915 Cal. Stat. at 1231–32.

217. *See* Lemert, *supra* note 11, at 42–46.

218. *Id.* at 43.

219. *Id.*

220. *Id.* at 42 (citations omitted).

221. *Id.* at 46.

222. *Id.* (quoting Cal. Bd. of Charities & Corr., Ninth Biennial Report 119 (1920)).

223. People v. Wolff, 190 P. 22, 23 (Cal. 1920).

224. *Id.* at 24.

225. *In re* Daedler, 228 P. 467 (Cal. 1924).

226. *Id.* at 468.

227. *Ex parte* Ah Peen, 51 Cal. 280 (1876).

228. *Ex parte* Becknell, 51 P. 692 (Cal. 1897).

229. *Daedler*, 228 P. at 472.

230. *In re* Edwards, 284 P. 916, 920 (Cal. 1930) (citation omitted).

231. *Id.* at 919.

232. *Id.*

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233. Sipes, *supra* note 54, at 28.

234. *Id.*

235. *Id.*; Judicial Council of Cal., First Report to the Governor and the Legislature 49 (1927), *in* Judicial Council Biennial Reports, 1st–9th (1927–1943).

236. Judicial Council of Cal., Third Report to the Governor and the Legislature 25, app. H (1931), *in* Judicial Council Biennial Reports, *supra* note 235.

237. *Id.* at 57.

238. Act of May 25, 1937, ch. 369, 1937 Cal. Stat. 1005.

239. *Id.* § 2.

240. *Id.* §§ 500–509, 1937 Cal. Stat. at 1019–20.

241. *Id.* § 700(c)–(f), 1937 Cal. Stat. at 1031–32.

242. *Id.* §§ 900–911, 1937 Cal. Stat. at 1054–56.

243. *Id.* § 903, 1937 Cal. Stat. at 1054–55.

244. Lemert, *supra* note 11, at 59.

245. *Id.* at 60 (citations omitted).

246. *Id.* at 61. For example, drinking, fighting, or sexual experimentation may be overlooked, while damaging ranch equipment or stealing cattle could elicit a strong, punitive reaction. *Id.* at 61 n.2 (citation omitted).

247. *Id.* at 73.

248. *Id.*

249. *Id.* at 74.

250. *Id.* at 74–75.

251. *Id.* at 75 (citation omitted).

252. *Id.*

253. *Id.*

254. *Id.* at 78.

255. *Id.*

256. *Id.*

257. Marr v. Superior Court, 250 P.2d 739, 742 (Cal. Ct. App. 1952) (citation omitted).

258. Lemert, *supra* note 11, at 78.

259. *Id.* at 79.

260. *Id.*

261. *In re* Alexander, 313 P.2d 182, 184 (Cal. Ct. App. 1957).

262. *In re* Cardenas Contreras, 241 P.2d 631, 633 (Cal. Ct. App. 1952).

263. Lemert, *supra* note 11, at 82.

264. *Id.* at 83 n.37.

265. *Id.* at 49; *see* Youth Correction Authority Act, ch. 937, 1941 Cal. Stat. 2522.

266. *Id.* at 49–50 (citing Cal. Youth Auth., Report on California Laws Relating to Youthful Offenders 75 (State of Cal. 1965)).

267. *Id.* at 50; *see* Youth Correction Authority Act, §§ 1731.5–1736, 1941 Cal. Stat. at 2526.

268. Lemert, *supra* note 11, at 50–51.

269. *Id.* at 51.

270. *Id.*

271. *Id.* at 52.

272. *Id.*

273. *Id.* at 52–53.

274. *In re* Herrera, 143 P.2d 345 (Cal. 1943).

275. *Id.* at 348 (citations omitted).

276. Lemert, *supra* note 11, at 84–85.

277. *Id.* at 85.

278. Special Crime Study Comm'n on Juvenile Justice, Final Report 13 (State of Cal. 1949) [hereinafter Final Report].

279. *Id.* at 15.

280. *Id.* at 20.

281. *Id.* at 24. In justifying this recommendation the commission suggested that a "youth court would recognize the wholesome drive of the adolescent to take on the full responsibility of an individual with personal rights and responsibilities without throwing him into the too frequently sordid surroundings and practices of the ordinary criminal courts and without denying to him the training and corrective measures provided for persons under the jurisdiction of the juvenile court." *Id.*

282. *Id.* at 49.

283. Lemert, *supra* note 11, at 85.

284. *Id.*

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285. Lemert, *supra* note 11, at 86.

286. Judicial Council of Cal., Fifteenth Biennial Report to the Governor and the Legislature 26 (Dec. 31, 1954) (citing 1949 Cal. Stat. 3289).

287. *Id.*

288. *Id.*

289. Final Report, *supra* note 278, at 7.

290. *Id.*

291. *Id.* at 7–8.

292. Lemert, *supra* note 11, at 88.

293. *See generally id.* at 89–106.

294. *Id.* at 98.

295. *Id*.

296. People v. Dotson, 299 P.2d 875, 877 (Cal. 1956).

297. Lemert, *supra* note 11, at 99.

298. *Id.*

299. *Id.* at 99–100.

300. *Id.* at 100.

301. *Id.* at 101.

302. *Id.* at 107–08.

303. *Id.* at 108.

304. Governor's Special Study Comm'n on Juvenile Justice, Report, Part 1: Recommendations for Changes in California's Juvenile Court Law 12 (Nov. 1960).

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.* at 18.

312. *Id.* at 19.

313. *Id.* at 26.

314. *Id.* at 27.

315. *Id.* at 23–49.

316. *Id.* at 10–11.

317. *Id.* at 51.

318. *Id.* at 49.

319. Lemert, *supra* note 11, at 126–42.

320. *Id.* at 151.

321. *Id.* at 153.

322. *Id.* at 153–54.

323. *Id.* at 154 (citation omitted).

324. *Id.* at 154–55.

325. *See* Act of July 14, 1961, ch. 1616, 1961 Cal. Stat. 3459.

326. *Id.; see* The Evolution and Role of Juvenile Justice and Delinquency Prevention Commissions 1 (Juvenile Justice & Delinquency Prevention Comm'rs Resource Manual 1991), *available at* www.bdcorr.ca.gov/fsod/jjdp_handbooks/jjdp_handbook_2000/htm_files/jjdp_handbook_evolution_role.htm.

327. Lemert, *supra* note 11, at 160.

328. *Id.* at 165.

329. *Id.* at 166.

330. Act of July 14, 1961, §§ 554, 627, 630, 633, 637, 658–660, 1961 Cal. Stat. at 3466, 3474–76, 3479. Counsel, on the other hand, did not have the right to be advised of events in the proceedings, but that right was added in 1967 following the *Gault* decision. *See* Act of July 5, 1967, ch. 507, § 1, 1967 Cal. Stat. 1852.

331. Act of July 14, 1961, §§ 633–634, 1961 Cal. Stat. at 3475. The statute did not mention the need for a knowing waiver of the right to counsel, nor did it provide for mandatory appointment of counsel if the minor was charged with misconduct that would have been a misdemeanor if committed by an adult; but the *Gault* case addressed both and led to amendments in 1967 making appointment of counsel mandatory in all delinquency cases "whether he is unable to afford counsel or not unless there is an intelligent waiver of the right to counsel." Act of Aug. 23, 1967, ch. 1355, §§ 4, 10, 1967 Cal. Stat. 3192, 3193, 3195.

332. Act of July 14, 1961, §§ 700–702, 1961 Cal. Stat. at 3481–82. Questions as to whether constitutionally prohibited, illegally obtained evidence could be used to sustain a finding of delinquency under the statute led to amendments in 1967 requiring that minors be given *Miranda*-type warnings and notice of their right to have counsel and

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ensuring their privilege against self-incrimination and right to confrontation and cross-examination of witnesses. Act of Aug. 23, 1967, ch. 1355, §§ 1–3, 1967 Cal. Stat. at 3192–93.

333. Act of July 14, 1961, § 502, 1961 Cal. Stat. at 3460.

334. *Id.* § 503.

335. The sixties proved to be a time of great change and turmoil, both on the streets and in the courts and Legislature. While the Legislature was making significant progress in promulgating statutory due process rights for both criminal defendants and juveniles, the Judicial Council was focused on improving the administration of justice in California's courts. When, in 1961, the Judicial Council appointed its first Administrative Director of the Courts, a position created by constitutional amendment, the council quickly moved to establish the Administrative Office of the Courts (AOC), which gave it new power to delegate the responsibility of carrying out the details of policy. Sipes, *supra* note 54, at 76–77. The council finally had the means to effectuate its vision of "simplifying and improving the administration of justice…." *Id.*

336. Lemert, *supra* note 11, at 164 (quoting *Judges Holding Back on New Juvenile Court Law,* Merced County Star, Nov. 11, 1961, page unknown).

337. *In re* Gault, 387 U.S. 1, 13, 33, 41, 55–57 (1967). In its decision, the Court cited both New York's and California's legislation requiring appointment of counsel in juvenile cases. *Id.* at 41.

338. *Id.* at 58.

339. *Id.* at 22–25.

340. *Id.* at 16.

341. *Id.*

342. *Id.* at 18.

343. *See* Ventrell, *supra* note 180, at 28.

CREDITS

Page 5: Oct. 20, 1891, Indenture Agreement Between the Boys and Girls Aid Society and Mrs. J. W. Daniels Regarding Elozu Jenkins, to Expire Jan. 9, 1895. BANC MSS C-A 170. Courtesy of The Bancroft Library, University of California, Berkeley.

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